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Attorneys for Secured Creditor:

THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK as

Trustee for FIRST HORIZON ALTERNATIVE MORTGAGE SECURITIES

TRUST 2005-AA8; Nationstar Mortgage LLC, (dba Mr. Cooper) as servicer

UNITED STATES BANKRUPTCY COURT**EASTERN DISTRICT OF CALIFORNIA – MODESTO DIVISION**

In re

JOHN HST YAP and IRENE LAIWAH
LOKE,

Debtors and Debtors in Possession

Chapter 11

Case No. 20-90210

D.C. No. AP-1____

**MOVANT'S 4001(d) MOTION TO
APPROVE STIPULATION RE:
TERMINATION OF THE
AUTOMATIC STAY AND POINTS
& AUTHORITIES IN SUPPORT
THEREOF****[F.R.B.P. 4001(d)(1)]****Class 1A****Subject Property:***1032 Deena Way
Fallon, NV 89406***Hearing:**

Date: April 29, 2021

Time: 10:30 a.m.

Ct. No. 33

Place: 501 "I" Street

Sacramento, CA 95814

Judge: Hon. Ronald R. Sargis (Chief)

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1 ***The Bankruptcy Proceedings:***

2 On March 17, 2020, Debtors filed the instant bankruptcy petition under Chapter
3 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of
4 California – Sacramento Division, and assigned Case No. 20-90210.

5 Movant filed a Proof of Claim against the Debtors' Estate for \$340,814.41,
6 secured by the Deena Property, with pre-petition arrears in the amount of \$196,424.52.
7 (*See, Proof of Claim, No.2-1*).

8 On February 17, 2021, Debtors filed their combined Chapter 11 Disclosure
9 Statement and Plan (collectively, "Plan"). (*See, Dkt. No.175*). Movant's Claim is
10 identified as a Class 1A Unimpaired Claim and Property to be surrendered. (*See, Dkt.*
11 *No.175*).

12 On March 24, 2021, Debtors and Movant executed a Stipulation Re: Termination
13 of the Automatic Stay and Surrender of the Property ("Stipulation"). (*See, Exhibit 1*).

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15 **III. ARGUMENT**

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17 **A. THE PARTIES ARE IN AGREEMENT THAT MOVANT IS ENTITLED**
18 **TO TERMINATION OF THE AUTOMATIC STAY**

19 **1. Legal Standard.**

20 Pursuant to Rule 4001(d)(1)(A)(iii) of the Federal Rules of Bankruptcy
21 Procedure, a party may file a motion seeking approval of an agreement to modify or
22 terminate the stay provided for in §362. Fed. R. Bankr. P. 4001(d)(1)(A)(iii). A motion
23 brought pursuant to Rule 4001(d) must contain "a concise statement of the relief
24 requested...that lists or summarizes, and sets out the location within the relevant
25 documents of, all material provisions of the agreement." Fed. R. Bankr. P.
26 4001(d)(1)(B). Rule 4001(d) operates to protect the interest of the creditor who may be
27 adversely affected by an undisclosed agreement by requiring notice to parties who may
28

1 have an interest in, or be affected by, such an agreement. *In re Manchester Ctr.*, 123
2 B.R. 378, 381 (Bankr. C.D. Cal. 1991)(citation omitted).

3 **2. Relief Requested.**

4 By this Motion, Movant seeks the Court's approval of the Stipulation.

5 **3. Material Provisions.**

6 The Stipulation contains the following material provisions:

- 7 • Movant's claim (its successors and/or assigns) secured by the Deena
8 Property shall not be modified in any way, shall be fully secured and
9 Debtors' Chapter 11 Plan shall not alter or modify the legal, equitable, and
10 contractual rights under the Note and Deed of Trust (*see* Stipulation, ¶ 1);
- 11 • The Automatic Stay of 11 United States Code §362(a) is hereby
12 immediately terminated and extinguished for all purposes as it applies to
13 Movant and Movant may proceed with foreclosure of the Deena Property
14 under the terms of Note and Deed of Trust and pursuant to applicable state
15 law to obtain possession of the Subject Property, including unlawful
16 detainer, if required, without further Order or proceeding of the Court (*see*
17 Stipulation, ¶ 3);
- 18 • Upon entry of the Order Confirming Debtors' Chapter 11 Plan, the Deena
19 Property shall be deemed surrendered to Movant and no longer be deemed
20 property of the Debtors' bankruptcy estate. Debtors agree that Debtors'
21 Chapter 11 Plan of Reorganization (including any modifications or
22 amendments thereto) shall continue to reflect that Creditor's Claim is
23 unimpaired, Debtors have surrendered the Deena Property to Creditor, and
24 that the Order Confirming Plan likewise constitutes an order for relief from
25 the Automatic Stay so Creditor may continue to proceed with its remedies as
26 to the Deena Property under the Loan and state law without further notice, or
27 proceeding of this Court (*see* Stipulation, ¶ 2);

